IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 610 of 1993

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G S R T C

Versus

LALLUBHAI K PATEL

Appearance:

1. Special Civil Application No. 610 of 1993

MR YOGESH S LAKHANI for Petitioner No. 1

MR VK JOSHI for Respondent No. 1

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 04/08/2004

ORAL JUDGEMENT

The petitioner- Gujarat State Road Transport Corporation [GSRTC] has assailed the judgment and award, recorded

by the Labour Court, Valsad, on 29.8.1992, in a Reference (LCV) No.99/90 under Section 10 (1) of the Industrial Disputes Act, 1947, whereby, the reference came to be partly allowed, directing the petitioner Corporation to reinstate the respondent driver on his original post with continuity of service and with full backwages, by quashing and setting aside the order of termination from service of the Corporation, which was passed by the petitioner, after holding departmental inquiry on the ground of indiscipline, fraud, repeated and continued negligence in his working, taking part directly in the politics and contesting the election of Gram Panchyat, and non disclosure of such participation in politics etc. and thereby, committing violation of the provisions of Item No.7,10, 12 (A), 27 and 37 highlighting the acts of misconduct in Schedule A of Discipline and Appeal Procedure for the Gujarat State Road Transport Employees, issued by virtue of the provisions contained in Regulation 80 of the Gujarat State Road Transport Service Regulation, by filing this petition, only under Article 227 of the Constitution of India.

It is in this context, the sole, but substantial issue which came for consideration, determination, and adjudication in this petition, can be briefly articulated and formulated as hereinunder:

"Whether the participation or contesting any election by an employee of the Corporation during the period of employment, like that, when the resignation from the service from the post of Driver is sent but not accepted and communicated to the incumbent, and again when on completion of such unsuccessful election, withdrawal of the resignation and acceptance of the withdrawal by the authorities or the master and also reinstating him in the original post without any knowledge of the participation in election by the employee, would tantamount to misconduct ? And if yes, such a delinquency is such of higher order and degree that it would necessitate or entail dismissal or removal from service ?

The respondent- who, at the relevant point of time, was working and serving as Driver, at Navsari depot, of Valsad division of the petitioner Corporation since almost two decades. He tendered his resignation from the post of Driver on the ground of his economic and family problems, by depositing one month salary as a notice pay and before the communication of his acceptance of resignation, respondent driver contesting the Gram Panchayat Election for the post of Sarpanch, on 06.6.1979

at Village Ambada, taluka Navasari, District- Valsad, unfortunately, respondent driver was defeated, firstly in the election adventure and secondly came to be dismissed from the employment.

Of course, immediately after, unsuccessful, attempt in the election before the acceptance of resignation from the post of Driver, he made an attempt by writing a letter to withdraw his resignation, and in a fanatic and frustrated attempt to take double advantage, without disclosing his having participation, unsuccessful in the election, the petitioner authority had no knowledge about such participation in election by the employee driver. The case of the respondent was considered and he was permitted to withdraw his resignation and that is how he came to be continued in the employment as a driver in the petitioner Corporation.

The petitioner Corporation did not know about the factum of contesting in the election. Upon having came to the notice of the Corporation, the respondent workman was departmentally dealt with, which was preceded by show cause notice. In a domestic inquiry, Inquiry Officer found him delinquent for violating the provisions of aforesaid Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees, made pursuant to the Regulation 80 of the Gujarat State Transport Employees" Service Regulations. The pleas raised in the reply to the charge sheet by the respondent driver did not find favour with the inquiry officer, as well as, the disciplinary authority. On the basis of the preliminary report, the charge sheet was prepared and was served on the respondent, on 07.7.1979, and it was replied by the respondent driver, on 19.9.1979.

During the course of the inquiry, the Inquiry Officer found charges held proved. Subsequently, the show cause notice, dated 08.2.1980, came to be served to the respondent with the report of the Inquiry Officer, which was replied by the respondent, on 12.2.1980. The Inquiry Officer reached to the conclusion from the record after evidence was recorded that the respondent driver misappropriated as the respondent had double crossed the petitioner Corporation by concealing the fact that he had contested the election, which is contrary to the provisions, as aforesaid and finally, dismissal order came to be passed by the Disciplinary Authority, on 19.7.1980, which was questioned by the respondent, by filing the first appeal before the First Appellate Authority of the petitioner Corporation, on 27.8.1981, unsuccessfully. Without approaching the second Appellate

Authority, the respondent has preferred to avail the provisions of Industrial Disputes Act and preferred Reference before the Labour Court, Surat, which was referred for the adjudication to the Labour Court, Navsari and, therefore, it was transferred to the Labour Court, Valsad.

In the Reference being (LCV) No.99/90, the Labour Court, Valsad, after considering the facts and circumstances of the case and the evidence on record, allowed the reference and directed the petitioner- Corporation to reinstate the respondent in service with full backwages and continuity of service, which has led to the Corporation to invoke the jurisdiction of this Court, under Article 227 of the Constitution of India, for the purpose of questioning the validity and the legality of the said award of the Labour Court, Valsad, interalia contending that the impugned award is not only unreasonable, unjust but patently illegal in the face of the establishment of fraud and serious misconduct on the part of the employee - the respondent in participating in the election, which is controverted and countenanced by the respondent driver interalia contending that there was no any such misconduct, as he had tendered one month salary, while submitting his resignation and that there was no question of fraud.

Despite the finding that the respondent driver had participated in election in violation of the Regulation, the Department has failed to prove serious misconduct or the act of fraud. The question, which requires to be considered and adjudicated upon, at this juncture, is as to whether, the view, the finding and the ultimate conclusions reached by the Tribunal in the impugned award are in any way vulnerable? If yes, what will be the reasonable imposition of punishment?

By any cannon of jurisprudence, it cannot be gainsaid that the participation of current employee in a political act, muchless, the election itself, is really not only subversive but explosive to the democratic values and in a democratic governance, more so, when the rules and regulation of Discipline adopted by the authority, under which the employees are working, are clearly prohibited from participating in such activities. Discipline in Management, Company, Organization, Institution is a sine quo none for the efficient and effective structural and infrastructural. It is a very vital and fore-fibre of democratic institution. No person, institution, organization, society, State or for that purpose, any international institution can survive for long without

the observance of discipline. History has taught us that indiscipline has led such bodies or personality in the past, at such a stage of no return and even otherwise no place in the garbage of waste paper basket of the history. It is, therefore, unquestionable that discipline is ought to be seriously, not only should be observed, but ought to be seriously imposed and followed by effective monitoring system and, any infraction or violation, leading to the grave and serious misconduct affecting the whole administration or the mechanism, in which the employees are functioning, can never be lightly viewed.

Again, the expression " Misconduct" as such has not been defined statutorily, even under the regulations of the Corporation, the expression" misconduct" is not elaborated or manifested or defined. Misconduct is also a elusive treatment, which can better prescribed than defined. Literally, it means bad conduct, or wrong or improper conduct. It is in this context, it can be safely mentioned that, ordinarily, it means failure to do, what is required to do. It therefore, constitute misconduct, even though, a person has not acted wilfully or malicely. When intentionally or deliberately done, it becomes wilful gross misconduct or serious dereliction of duty.

It is in this context, let us have a skeleton projection of the relevant provisions made in the Discipline and Appeal Procedure in the Gujarat State Road Transport Corporation Employees, pursuant to the provisions contained in Regulation 80 of the Gujarat State Transport Employees" Service Regulations, which provides acts of misconduct in Schedule A, which enumerates several misconduct and acts or deliquency. The charge against the respondent driver for violation of the provisions has been mainly of Item No.10, which relates to indiscipline 12(b), which relates to fraud, dishonestly or misappropriation in connection with the property of the Corporation, whereas, 27 pertains to repeated or continued negligence or negligent of working and item No.37, which is very important, which is referable to taking part directly or indirectly in the activities of any political and taking part in election of any body or local authority.

Following aspects have emerged, indisputably, in the light of the record of the present case.

(1) respondent driver had tendered his resignation from the post of Driver for the reasons of his

economic and social conditions,

(2) The resignation request made by the respondent driver was not accepted and no communication was made to him by the Corporation and in that period, admittedly the respondent driver contested election for the post of Sarpanch of Ambada Gram Panchayat, but unfortunately unsuccessful.

(3) As it happens in many such cases and upon defeat and unsuccessful attempt in election being highly fregmanted, furious and frustrated and realizing the mistake of tendering resignation and the fire of fighting the election, respondent has made attempt to withdraw his resignation by writing a letter to the petitioner Corporation, without mentioning any reason why he has resigned from his original stand and sought withdrawal of his resignation, which was for an ulterior motive.

(5) Since the reality about contesting in election and that too unsuccessful was not to the notice of the petitioner Corporation, the petitioner Corporation in its generous and magnanimous view and approach to the employee, permitted him to withdraw the letter of resignation with the help of letter of withdrawal of the resignation, and resultant reinstatement in original post of driver.

Later on, it came to the notice of the petitioner Corporation about the said factum of respondent driver, having contested election, unsuccessfully, for the post of Sarpanch for the Ambada Gram Panchayat, the petitioner Corporation left with no alternative but to initiate the departmental action against the respondent, for which the procedure was followed. The Inquiry Officer was appointed, evidence was led, inquiry report was received and upon finding by the disciplinary authority that there was a gross misconduct on the part of the respondent driver by participating in election and thereafter withdrawing the letter of resignation without any intimation or knowledge of such participation in the election to contest for the post of Sarpanch for the Ambada Gram Panchayat, which was not contested in the departmental proceedings. Obviously, culminated into termination of service of the respondent driver from the employment of the Corporation.

After having taken into consideration the entire factual

matrix emerging from the record of the present case, the relevant legal settings, the relevant provisions of rules and regulations made pursuant to the provisions of Regulation 80 of the Gujarat State Transport Employees Service regulation of the petitioner Corporation and undisputed fact that the respondent driver had not disclosed of his having entailing an intention to contest the election for the post of Sarpanch of the Ambada Gram Panchayat, and upon loosing the election battle, again without any intimation to the authority, like petitioner Corporation and seeking withdrawal of the resignation, which was given on a false ground, and resultant holding of departmental inquiries and views and findings of the Inquiry Officer that the respondent driver has committed serious act of fraud, dereliction of duty and breach of provisions of item no.10,12 (A), 27 and 37 OF Schedule A of the said rules and regulation made under regulation 80 of the Gujarat State Transport Service, and the departmental imposition of penalty of dismissal from the service, by no stretch of imagination can be said to be harsh and unreasonable or irrational, requiring any interference by any Court in the doctrine of judicial review.

Notwithstanding, without assigning any specific clear and cogent reasons, in exercise of provisions of Section 11(A) of the Industrial Disputes Act, the Labour Court committed serious error of law in upsetting and reversing the conclusions and ultimate decision reached by the disciplinary authority in dismissing the respondent driver from the service. It is true that Section 11(A) provides sufficient power to the Labour Court to examine and exercise the discretion, if the disciplinary authority has acted unreasonable, unjustly or irrationally. On the contrary, it is manifested from the record of the present case that the action of the petitioner Corporation in light of the peculiar facts of this case in dismissing the respondent driver from the service was quite just, reasonable and legal being guilty and delinquent of gross misconduct and serious dereliction of duty. It is in this context, the impugned award of the Labour Court, with due respect, to the Labour Court, is palpably and patently illegal requiring interference of this Court in exercise of Constitutional Writ Jurisdiction, so as to put the miscarriage of justice, resulted into in a proper and legal shape by quashing and setting aside and restoring the imposition of penalty of the disciplinary authority after holding inquiry and observing due process and procedure required.

For the aforesaid grounds, the petition shall stand

allowed. The impugned award of the Labour Court, dated 29.9.1992, shall stand quashed and set aside. The impugned order of the disciplinary authority before the Labour Court shall stand restored. Rule made absolute accordingly with no order as to costs.

[J.N.BHATT, J]

SNS